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Fifth report of the Secretary-General pursuant to paragraph 4 of Security Council resolution 2107 (2013)

I. Introduction

1. The present report is submitted pursuant to paragraph 4 of Security Council resolution 2107 (2013) and covers developments pertaining to the issues of missing Kuwaiti and third-country nationals and missing Kuwaiti property, including the national archives, since the issuance of my previous report, dated 31 October 2014 (S/2014/776).

2. During the reporting period, bilateral relations between Iraq and Kuwait were marked by significant positive developments. On 21 October, the Speaker of the Council of Representatives of Iraq, Salim al-Jabouri, and a delegation of parliamentarians travelled to Kuwait, where they held meetings with the Prime Minister of Kuwait, Jaber al-Mubarak, the Speaker of the National Assembly of Kuwait, Marzouq al-Ghanem, and a number of Kuwaiti parliamentarians. Relations between the parliaments of the two countries and ways to consolidate and develop those relations, in addition to recent regional developments, were discussed.

3. On 3 and 4 November, the Minister for Foreign Affairs of Iraq, Ibrahim al-Jaafari, also visited Kuwait, where he met the Deputy Prime Minister and Minister for Foreign Affairs, Sabah Khaled al-Hamad al-Sabah, the Speaker of the National Assembly of Kuwait and other officials. The visit was aimed at boosting and cementing bilateral relations between the two countries. The two ministers discussed ways to promote and enhance cooperation and coordination on several issues of mutual interest, most notably security and the regional threat posed by the Islamic State in Iraq and the Levant (ISIL).

4. Goodwill between the two countries was further evidenced when Kuwait supported the request made by Iraq that the Governing Council of the United Nations Compensation Commission agree to a deferral of the requirement that Iraq deposit 5 per cent of oil proceeds into the Compensation Fund pursuant to paragraph 21 of Security Council resolution 1483 (2003). On 18 December, the Governing Council adopted its decision 272 (2014), by which it postponed, until 1 January 2016, the payment of the remaining $4.6 billion in reparation owed to the Government of Kuwait.

5. On 21 December, the Prime Minister of Iraq, Haider al-Abadi, visited Kuwait as part of a regional tour to discuss the common threat of terrorism. He met with Emir Sabah al-Sabah and Crown Prince Nawaf al-Sabah, as well as the Prime

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Minister of Kuwait. The two Prime Ministers discussed a potential relief fund to help rebuild areas in Iraq freed from the control of ISIL. The Prime Minister of Kuwait said that his country was ready to provide all the support needed to its "brotherly neighbour Iraq".

6. On 28 and 29 December, the fourth meeting of the Joint Ministerial Committee was held in Baghdad. Iraq and Kuwait signed key agreements and memorandums of understanding, including on bilateral security cooperation, navigation and trade relations. Kuwait announced the opening of consulates in Basra and Erbil and agreed to facilitate the entry of diplomatic passport holders and all other travellers from Iraq.

II. Recent activities with regard to the repatriation and return of all Kuwaiti and third-country nationals, or their remains

7. On 11 November, in follow-up to his meeting in August with Iraqi university experts on ground-penetrating radar and topographic techniques, the Minister for Human Rights of Iraq, Mohammed al-Bayati, established joint committees to work on identifying potential grave sites. Also on 11 November, the Iraqi interministerial committee on missing Kuwaiti nationals convened to review progress and to discuss practicalities linked to witnesses, including with regard to bringing to Kuwait those witnesses who had volunteered to do so, with a view to identifying potential grave sites. In response, Kuwait expressed its readiness to welcome all witnesses and to facilitate their tasks as necessary.

8. During the visit by my Special Representative for Iraq to Kuwait on 24 and 25 November, the Prime Minister and the Deputy Prime Minister and Minister for Foreign Affairs expressed appreciation for the efforts of the United Nations Assistance Mission for Iraq (UNAMI) in the search for missing Kuwaiti persons. Nonetheless, they expressed disappointment at the lack of any tangible achievements over the past year. While aware of the difficult circumstances facing Iraq, the Kuwaiti officials underscored their desire to see concrete results. In that regard, they welcomed my Special Representative's suggestion that geographical surveillance expertise be deployed to assist in the identification and analysis of potential grave sites. The Kuwaiti leaders were also briefed on UNAMI efforts to contact a potential Iraqi witness overseas who is believed to hold key information about a site that might contain as many as 180 human remains. My Special Representative stressed the need for more resources to be directed at technical expertise, including for non-governmental partners working on the issue.

9. On 24 November, my Special Representative opened a 10-day exhibition, held at the United Nations House in Kuwait, of some 30 paintings by young Iraqi artists born after 1990 entitled "Innocents". The exhibition, which was jointly sponsored by UNAMI and the United Nations Development Programme, was part of UNAMI efforts to strengthen ties between the people of Iraq and Kuwait and promote social cohesion in the two countries. The exhibition was well received and will be shown in Baghdad in February 2015 and then again in Kuwait, in the second quarter of 2015.

10. My Deputy Special Representative for Political Affairs continued to carry out the tasks with which he was mandated under Security Council resolution 2107

(2013). To that end, he met with several Iraqi interlocutors, including the Minister for Human Rights, the then Under-Secretary for Foreign Affairs in charge of Iraq-Kuwait relations, Mohammed al-Haj Hammoud, the head of the interministerial committee on missing Kuwaiti property, including the national archives, Walid Shiltagh, the head of delegation of the International Committee of the Red Cross (ICRC) in Iraq, Patrick Youssef, the head of the Iraq Programme of the International Commission on Missing Persons, Duncan Spinner, and the Minister for the Interior of the Kurdistan Regional Government, Karim Sinjari. He also met with the Ambassador of Kuwait to Iraq, Ghassan al-Zawawi.

11. Following the Tripartite Commission decision of 22 October to grant UNAMI observer status, my Deputy Special Representative led a UNAMI delegation to Kuwait to attend the bimonthly meeting of the Commission's Technical Subcommittee, held on 19 November. At the meeting, my Deputy Special Representative welcomed the granting of observer status to UNAMI and conveyed his appreciation to the Subcommittee for the opportunity to participate in its meetings for the first time. Expressing the views of all parties he had met in Iraq and Kuwait, he emphasized the urgent need to overcome the impasse that had prevailed since 2004. He reiterated the need for technical expertise from external partners, as well as the usefulness of lessons learned from other countries facing similar concerns, noting that scientific advances could prove useful in this context. With regard to the search for the national archives, my Deputy Special Representative suggested that the Subcommittee tap into the academic expertise of Iraq and advised that this should be done under the aegis of an international organization with recognized expertise and skills.

12. On 14 January, UNAMI participated, for the second time, in discussions of the Technical Subcommittee, at a meeting held in Kuwait. With regard to the suggestion made during the Subcommittee meeting of 19 November regarding the use of new technology to make progress in the search for missing Kuwaiti persons, Iraq confirmed that discussions had been initiated with Baghdad University. Initial feedback indicates, however, that lidar technology might not prove useful for locating human remains. While awaiting final conclusions in that regard, the Iraqi delegation proposed focusing on alternatives, such as ground-penetrating radar techniques.

13. Participants in the meeting also focused on information provided by witnesses who had recently engaged with the Technical Subcommittee to assist in identifying burial sites. A representative of Iraq stated that since the previous Subcommittee meeting, a team composed of representatives of Kuwait, Iraq and ICRC had been sent to the Kuwait-Saudi Arabia border. Despite the efforts undertaken by all parties, the findings of the mission were not conclusive. A representative of Kuwait also presented the findings of excavations that had taken place in mid-October at the Kuwait naval base. These results too remain inconclusive at this stage. Also during the reporting period, on the basis of information provided by Kuwait, a delegation from the Iraqi interministerial committee on missing Kuwaiti persons travelled to the Maaqal site, in Basra, to conduct a survey. The delegation concluded that the site was not appropriate for burying human remains. In the margin of the Subcommittee meeting of 14 January, the witness concerned and the representatives of Kuwait, Iraq and ICRC held a meeting. The witness could not, however, provide any additional information, so the conclusions remained unchanged. The Subcommittee members agreed with the recommendations contained in the draft

framework on the protection of witnesses prepared by ICRC and requested a shorter version focusing on the basic principles for the protection of witnesses.

14. While in Kuwait in November, my Deputy Special Representative took the opportunity to meet with Kuwaiti officials in furtherance of his mandate. He met with Adviser to the Emir Mohammad Abdullah Abulhasan, Under-Secretary for Foreign Affairs Khaled al-Jarallah, the head of the Department of International Organizations, Jasem Mubarakki, Counsellor to the Minister for Foreign Affairs Khalid Maqamis, the Chairman of the National Committee for Missing Persons and Prisoners of War Affairs, Ibrahim al-Shaheen, the head of the ICRC regional delegation to the Cooperation Council for the Arab States of the Gulf, Gerard Peytrignet, and members of the diplomatic community.

15. The Under-Secretary for Foreign Affairs commended UNAMI for its work and the decision to admit UNAMI as an observer to the tripartite mechanism. He also stressed the need for Iraq to act more decisively to achieve concrete results. He reiterated the concerns of the Kuwaiti delegation regarding the lack of progress on missing persons since 2004 and the absence of tangible efforts from the Iraqi side in 24 years, including on the national archives. The Chairman of the National Committee for Missing Persons and Prisoners of War Affairs expressed frustration in relation to what his organization perceived to be a lack of Iraqi initiative. My Deputy Special Representative proposed that Kuwaiti officials and the National Committee for Missing Persons and Prisoners of War Affairs invite the Minister for Human Rights of Iraq to raise awareness and strengthen engagement at the highest level on the issue of missing persons and property. The Kuwaiti delegation welcomed the proposal.

III. Recent activities with regard to the return of Kuwaiti property

16. From 16 to 18 November, the Ministry of Foreign Affairs of Iraq published quarter-page advertisements on missing Kuwaiti persons and property in 13 newspapers, and announced that it planned to repeat that campaign every three months. During his meetings with the then Under-Secretary for Foreign Affairs in charge of Iraq-Kuwait relations and the head of the Iraqi interministerial committee on missing Kuwaiti property, my Deputy Special Representative reiterated his suggestion that the Ministry of Foreign Affairs run a special information campaign exclusively for the Kuwaiti national archives. He urged the Ministry to take steps to convene a meeting of the Joint Property Committee at the earliest so as to comply with the bilateral decision for the Committee to meet every six months. He underscored the importance of such meetings for building understanding and empathy between the parties. His interlocutors agreed with the suggestions and committed themselves to act upon them.

IV. Observations

17. I am pleased that the ties between Iraq and Kuwait continue to grow stronger. This mutual goodwill is commendable. I hope that a formal visit by the Minister for Human Rights of Iraq to Kuwait will take place in the foreseeable future, as an expression of this goodwill. Progress on the issue of missing Kuwaiti persons and

property can only cement this relationship further and contribute to a positive impact at the regional level with regard to other issues, such as security and the threat posed by ISIL.

18. I remain concerned about the lack of tangible results in the search for missing Kuwaiti persons and property, including the national archives. I believe that Iraq can fully understand the frustration of Kuwait and its desire for progress notwithstanding its difficult security and economic situation. The assurances of Iraq that it continues to accord the highest consideration to this humanitarian issue are reassuring. Nonetheless, it is important to note that the status quo is not acceptable to the families of the missing and that no justification, however valid, could relieve their anxiety as they wait to learn about the fate of their loved ones. I encourage Iraq to renew all efforts to reach out to informants and witnesses, both inside and outside Iraq. UNAMI stands ready to assist the Government of Iraq, as appropriate.

19. It is disappointing that no evidence or clues have emerged so far with regard to the national archives of Kuwait. I hope that the suggestions made by UNAMI to use the help of Iraqi academics and to bring new witnesses will be acted upon without further delay. Progress in this area will be instrumental in strengthening bilateral relations between Iraq and Kuwait.

20. In this regard, I reiterate my earlier call on Iraq to quickly adopt new methods in the search for remains, including new forensic and geological exploration techniques, and infrastructure. I must caution that it will only be possible to implement technical know-how and new technologies successfully and sustainably if the requisite systems and management structures are in place. Iraq should not shy away from building its capacity to improve the efficiency of the search, reducing the margins of error and increasing the probability of future success. To that end, Iraq might wish to consider enhancing its national capacity with proven and tested international expertise. Here again, UNAMI stands ready to provide the necessary technical expertise.

21. I wish to commend the work of ICRC in addressing the issue of missing Kuwaiti and third-country nationals, particularly as the Chair of the Technical Subcommittee. In this capacity, ICRC has continued to show leadership in bringing all parties concerned together and ensuring sustained dialogue during the reporting period.

22. I wish to reiterate the appreciation of UNAMI for having been granted observer status to the tripartite mechanism. This demonstrates the willingness of all concerned to move forward on this issue. UNAMI is committed to supporting the Technical Subcommittee by all possible means, including by providing expertise and facilitating dialogue and bilateral exchanges as requested, and by continuing to play an integral and supportive role in the tripartite mechanism.